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+ W.P.No.16292 of 2005

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$ The Commissioenr of Endowments,
Tilak Road, Boggulakunta, Abids,
Hyderabad and 4 others.

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! C o u n s e l f Sri M. Vidya Sagar **t i t i o n e**

^ C o u n s e l f o r R e s p o n d e n t : G.P. **s o . 1 , 3** **a d r**

C o u n s e l f o r R e s p o n d e n t S. Ramakodu
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? C A S E S R E F E R R E D :-

HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION No.16292 of 2005

Date: October 26, 2007

Between:
Rachakonda Venkatacharyulu. … Petitioner

And

1. The Commissioner of Endowments,
   Tilak Road, Boggulakunta, Abids,
   Hyderabad and 4 others. … Respondents.

* * *

ORDER:

Heard Sri M.Vidya Sagar, learned counsel representing the writ petitioner, learned Government Pleader for Endowments representing respondents 1, 3 and 4 and Sri Saratkumar, learned Standing Counsel representing respondents 2 and 5.

2. The writ petition is filed for a writ of *Mandamus* declaring action of the first respondent i.e., the Commissioner of Endowments, in passing the impugned order in L.Dis.No.G1/13408/05, dated 16.7.2005, as illegal, arbitrary, bad in law and contrary to the judgment of the Supreme Court and pass such other suitable orders.

3. The order impugned in the present writ petition reads as hereunder:

Office of the Commissioner,
Endowments Department, A.P., Hyderabad.

L.Dis.No.G1/13408/05, Dt.16.7.05.

Sub:- Endowments Department- Representation of Sri G.Govindacharyulu, Founder Trustee, Sri Laxmi

Narasimha Swamy Temple, Nampally (V), Vemulawada (M), Declaration of his son as Founder Trustee- Rejected- Reg.

Ref:- RC.No.A2/2581/C04, dt.19.3.05 from the Deputy Commissioner, Endowments Department, Warangal.

* * *

Attention of the Deputy Commissioner, Endowments Department, Warangal is invited to the reference cited and he is informed that Sri Lakshmi Narasimha Swamy Temple, Nampally (V), Vemulawada (M), was adopted by Sri Raja Rajeswara Swamy Devasthanam, Vemulawada. After adoption, the institution shall be deemed to comprise a single institution only for the purpose of administration as tripiluted u/s 145 of the Act. So there cannot be a founder trustee separately to Sri Laxmi Narasimha Swamy Temple, Nampally (V) which is adopted by Sri Raja Rajeswara Swamy Devasthanam, Vemulawada managed by the Executive Officer of Regional Joint Commissioner cadre, the Deputy Commissioner is requested to inform the applicant accordingly.

(By order of the Commissioner)

Sd/- K.Sivaram Sharma
Deputy Commissioner (G)

4. The learned counsel for the writ petitioner Sri Vidya Sagar would maintain that the impugned order cannot be sustained since hereditary rights cannot be affected by virtue of an action taken under Section 145 of the Andhra Pradesh Charitable and Hindu Religious Institutions & Endowments Act, 1987 (hereinafter in short referred to as 'the Act' for the purpose of convenience). The learned counsel also had taken this Court through the contents of the affidavit filed in support of the writ petition and would maintain that there is no dispute or controversy that the petitioner belongs to founder family. When that being so, the question of approaching concerned Deputy Commissioner of

Endowments under Section 87 (1)(h) of the Act would not arise. The counsel also would submit that the stand taken in the counter-affidavit relating to relinquishment of hereditary rights also cannot be a sustainable stand. While making elaborate submissions the learned counsel would contend that such hereditary rights, which had been protected, atleast to the limited extent, by the provisions of the Act, cannot be defeated. By giving such an interpretation to Section 145 of the Act, it cannot be taken as though these rights are extinguished by virtue of amalgamation and, hence, the right of the petitioner as a successor of the family of founder of the institution may have to be declared and at appropriate stage the case of the petitioner to be considered. Even otherwise, the learned counsel would submit that the way in which the order is made and the nature of the order if carefully scrutinized the same cannot be sustained and the whole issue to be reconsidered.

5. *Per contra*, the learned Government Pleader for Endowments had taken this Court through sub-section (2) of Section 145 of the Act in particular and would maintain that in the light of the clear language employed in sub-section (2) of Section 145 of the Act, after amalgamation of Sri Lakshmi Narasimha Swamy Temple, Nampally village, Vemulawada Mandal, Karimnagar District with Sri Raja Rajeswara Swamy Devastanam, Vemulawada it is to be treated as single institution and, hence, unless again decision is taken under sub-section (3), till then, the petitioner cannot claim any right, whatsoever, in this regard. Learned counsel also wound maintain that even otherwise when once Archakatwam service is accepted, it must be deemed that the hereditary rights, if any, in relation to trusteeship had been relinquished. Even otherwise, the proceedings themselves being incompetent, the order impugned cannot be found fault, hence, the writ petition is liable to be dismissed.

6. Sri Satish Kumar, learned counsel representing the institution would maintain that by virtue of amalgamation there is only one institution or single institution in the eye of law and, hence, it would be a futile exercise on the part of the writ petitioner to get such a declaration at present.

7. This Court issued *rule nisi* on 12.8.2005. However, on 15.12.2005 the following order was made in W.P.M.P.Nos.20710 and 20711 of 2005.

> "Heard both sides.
>
> Having regard to the language of Section 145 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act 30 of 1987, it is clear that the Commissioner of Endowments is competent to direct amalgamation of the religious institution with another religious institution having similar objects and on such amalgamation, the Trustee of the institution to which it is amalgamated shall maintain and administer such institution.
>
> In the circumstances, prima facie it appears that the impugned order dated 16.7.2005 passed by the first respondent is in accordance with law. Hence, I am not inclined to grant the interim orders as prayed for.
>
> Accordingly, the WPMPs are dismissed. However, the Registry is directed to post the writ petition for final hearing on 01.02.2006 subject to part-heard."

8. The petitioner hails from the family of founders of subject temple Sri Lakshmi Narasimha Swamy Temple, Nampally village, Vemulawada Mandal, Karimnagar District. The subject institution is an old temple constructed about 150 years back and the petitioner herein traces his right from his forefathers. It is stated that the subject temple was managed by the grandfather of the petitioner Rachakonda Suraiah who had built the same with his own personal funds in

Nampally village. He had also rendering archakatwam service to the subject temple. Right from the date of construction of the subject temple, the institution was managed in line of succession by the grandfather of the petitioner and subsequently his father, as founders. The father of the petitioner Govindacharyulu also was declared as hereditary trustee of the subject institution under the Act 17 of 1966 in O.A.No.17/1983 and as per the said declaration the petitioner's family were founders of the subject institution and the right of management was accrued to petitioner's father by virtue of being the erstwhile hereditary trustee and also consequently being declared as founder trustees of the subject institution.

9. It is further averred in para 5 of the affidavit filed in support of the writ petition that be that as it may consequent to the abolition of hereditary rights and bringing into force of Act 30 of 1987, the petitioner's father Govindacharyulu along with his two brothers Rachakonda Krishnama Charyulu and Rachakonda Narasimha Charyulu had filed an application before the Assistant Commissioner of Endowments, Karimnagar, who was the appropriate authority under the earlier Circular No.J5/5288/96 (Acts and Rules), to adjudicate the claims of Founder Trustees of various institutions irrespective of classification. In pursuance of the said application being filed by the petitioner's father, the Assistant Commissioner of Endowments after due enquiry had given declaration in favour of the petitioner's father along with two others by his proceedings Rc.No.B/1075/98, dated 19.6.1998 declaring them as members belonging to the family of founders of Sri Lakshmi Narasimha Swamy Temple, Nampally village, Vemulawada Mandal of Karimnagar District. Pursuant to the same, the petitioner's father was managing the subject institution in his capacity as a founder and the said declaration had become final. The other two founder trustees Rachakonda Krishnama Charyulu and Narasimha Charyulu passed away and their sons had relinquished

their rights as founders to the subject institution. In view of the protection given to them under Sections 34 and 35 of the Endowments Act to the hereditary office holders and in view of their rendering archakatwam service to the subject institution as on the date of abolition of hereditary rights, their services were regularized and presently both were employed, one was working as Archaka in Sri Lakshmi Narasimha Swamy Devastanam, Nampally village. It is further stated that in view of the advanced age of the petitioner's father, the petitioner's father approached the Deputy Commissioner of Endowments, Warangal, along with his son and had given an application to declare him as Founder Trustee. The Deputy Commissioner of Endowments refused to accept the said application and returned the same directing the petitioner and his father to file an application before the Commissioner of Endowments, which prompted the petitioner to file an application on 15.02.2005 seeking a declaration that the petitioner was declared as a member belonging to the family of founders of the subject devastanam. It is also averred that quite peculiarly on receipt of said applications, two officers of the Department passed two contradictory orders. The first order was passed by the Regional Joint Commissioner of Endowments, Multi Zone-III, wherein he had directed by his proceedings L.Dis.B/617/05, dated 01.3.2005 the petitioner's father, the founder trustee, to approach the Deputy Commissioner of Endowments under Section 87 (1)(h) since the institution had been classified under Section 6 (b) of the Endowments Act. Further it is stated that the second order i.e., impugned order passed by the first respondent, the Commissioner of Endowments, quoted a different reason indicating that the subject institution Sri Lakshmi Narasimha Swamy Temple, Nampally village was adopted by Sri Raja Rajeswara Swamy Devastanam, Vemulawada, under Section 145 of the Act and as per the said provision the institution would be deemed to be a single institution for the purpose of administration and as such there cannot be a founder

trustee to the 5th respondent temple. It is also stated that it is not known under which provision of the Act the first respondent is empowered to make such an order relating to the rights of the petitioner in relation to the founder trustee of the subject temple.

10. A counter-affidavit is filed taking a stand that the Commissioner, Endowments Department, in exercise of powers vested in him under Section 145 of the Act having considered that Sri Lakshmi Narasimha Swamy Temple, Nampally village was not capable of maintaining out of its own funds, had issued orders to adopt the temple by Sri Raja Rajeswara Swamy Devasthanam, Vemulawada for its maintenance. Accordingly, the temple was adopted by Sri Raja Rajeswara Swamy Devasthanam, Vemulawada in the month of July 2000. Since then the temple is being administered by Sri Raja Rajeswara Swamy Devasthanam, Vemulawada. It is also stated that Sri Lakshmi Narasimha Swamy Temple, Nampally village, before its adoption, was actually not in a condition to pay salaries of its employees and CESS bills to a tune of Rs.32,368/- and Rs.7,200/- respectively and bank balance of the temple was Rs.540/- only. Section 145 (2) of the Act had been referred to and further it is stated that in the light of the same, the Commissioner, Endowments issued orders in Rc.No.G1/13408/05, dated 16.7.2005, rejecting the application of the petitioner to declare him as a member of founder's family while the temple was under the administration of Sri Raja Rajeswara Swamy Devasthanam. It is also stated that in the year 1985 the then Deputy Commissioner of Endowments, Hyderabad in O.A.No.17/1983 had issued order No.54, dated 30.10.1985 declaring the trusteeship in Sri Lakshmi Narasimha Swamy Temple, Nampally village was hereditary vesting in the family of the petitioner i.e., Sri R.Govindachary who is said to be the father of the petitioner Sri R.Krishnama Chary and R.Narasimha Chary who are eligible to function as hereditary trustees in rotation. It is further stated that after abolition of the hereditary trusteeship as per Section 16 of the

Act which was upheld by the Apex Court, Rachakonda Govindachary, Rachakonda Krishnama Chary and Rachakonda Narasimha Chary had filed an application before the then Assistant Commissioner of Endowments Karimnagar District to recognize them as members of the family of the founder of Sri Lakshmi Narasimha Swamy Temple, Nampally village. The Assistant Commissioner, having gone through the details, had declared the individuals to be the members of the family of the founder of the temple and informed them to the extent that they are not entitled for any remuneration from the funds of the temple while being continued as members of the family as founder of the temple and Section 19 (g) of the Act also had been referred to. Further specific stand has been taken that since the individuals were discharging archakatwam of the temple, the then Executive Officer of the temple, keeping in view the orders of the Assistant Commissioner, had requested the individuals to decide for themselves and inform as to whether they need not to continue as trustees or to continue the archakatwam service. Despite repeated notices, Rachakonda Govindachary, the father of the petitioner and Rachakonda Krishnamachary had not expressed any intention and Rachakonda Narasimha Chary informed that he would continue as trustee and his son Vijaya Simha Chary would continue as archaka. It is stated that the temple was adopted by Sri Raja Rajeswara Swamy Devasthanam, Vemulawada. Specific stand had been taken that getting employment would amount to relinquishing the right of being founder trustee. Since another son of Rachakonda Govindachary namely Rachakonda Ramachary was provided employment as archaka of the temple, it should be taken that Rachakonda Govindachari had relinquished his rights relating to being the founder trustee and in the light of the same, the writ petitioner cannot claim the said right of trusteeship on the ground of belonging to the founder family. Further, certain facts had been narrated and specific stand had been taken that in the light of the amalgamation made by virtue of Section 145 of the Act the order

impugned is perfectly justified. Several of the facts are not in serious controversy.

12. The main grievance of the writ petitioner is that the Commissioner of Endowments had not appreciated the issue relating to the rights of the petitioner as belonging to the founder trustee family in proper perspective and the provisions of the Act had been misinterpreted. Sections 145 and 17 of the Act had not been understood properly and at any rate by virtue of such an order of amalgamation the simple saved hereditary rights protected by the statute also cannot be totally done away with.

13. Section 145 of the Act deals with adoption or amalgamation of institution and endowments. This Section is a new provision and the same was enacted in the light of the recommendations made by Justice Kondaiah Commission in Vol.1 of the report at page 79. The object behind this provision appears to be that several temples which are unable to maintain themselves for want of income even to support the archaka or to perform minimum temple service of Deeparadhana etc., if amalgamated with a rich temple by virtue of such amalgamation even the poor temple will be maintained well. It may be appropriate to have a glance at sub-Sections 1, 2, 3 and 4 of the Section 145 of the Act and the said sub-Sections read as hereunder.

> "**Sec. 145. Adoption or amalgamation of institution and endowments** (1) Where the Commissioner has reason to believe that any religious institution is not capable of maintaining out of its funds, he may, in the interest of proper management of administration, subject to such restrictions and conditions as he may deem fit, direct the amalgamation or as the case may be, the adoption of such religious institution by any other religious institution having similar objects and capable of managing such institution and thereupon the trustee of the institution to which it is amalgamated or by which it is adopted shall maintain and administer such institution.

(2) On such amalgamation or adoption the institutions shall be deemed to comprise a single institution and administered as if they were a single institution published under Section 6.

(3) Where the institution so amalgamated or as the case may be adopted under sub-section (1), subsequently found to be capable of being managed by itself, the Commissioner may in the interest of proper management of administration, revoke the orders issued under sub-section (1), and thereupon the institution shall manage its affairs independently out of its funds.

(4) An appeal shall lie to the Government against the orders passed by the Commissioner under sub-section (1) or sub-section (3)."

14. It is pertinent to note that as against an order made under sub-section (1) or any order made under sub-section (3) an appeal would lie to the Government under sub-section (4). It appears the amalgamation order had not been questioned. Be that as it may, the language employed in sub-section (2) would assume some importance, which specifies that on such amalgamation, or adoption the institution shall be deemed to comprise a single institution and administered as if they were a single institution published under Section 6. It is no doubt true that sub-section 3 further specifies that where the institution so amalgamated or adopted under sub-section (1) if subsequently found to be capable of being managed by itself, the Commissioner may in the interest of proper management of administration revoke the orders issued under sub-section (1) and thereupon the institution shall manage its affairs independently out of its funds. As on today, the commissioner had not exercised such a power conferred on him by sub-section (3).

15. Section 6 of the Act deals with preparation and publication of list of charitable and religious institutions and endowments on the basis of income. Section 16 of the Act deals with abolition of

hereditary trustees. This abolition of hereditary trustees has been upheld by the Apex Court in **Pannalal Bansilal Pitti vs. State of A.P.**[1]. Section 15 of the Act deals with appointment of Board of Trustees reads as hereunder.

> "**Sec. 15. Appointment of Board of Trustees**:- (1) In respect of a charitable or religious institution or endowment included in the list published under clause (a) of Section 6 —
>
> (a) whose annual income exceeds rupees ten lakhs, the Government shall constitute a Board of Trustees consisting of (nine) persons appointed by them;[Substituted by Act 26 of 1990 (w.e.f. 21.1.1991)]
>
> (b) whose annual income does not exceed rupees ten lakhs, the Commissioner shall constitute a Board of Trustees consisting of [seven] persons appointed by him. [Substituted by Act 26 of 1990 (w.e.f. 21.1.1991)]
>
> (2) In respect of a charitable or religious institution or endowment included in the list published under clause (b) of Section 6, the Deputy Commissioner having jurisdiction shall constitute a Board of Trustees consisting of [seven] persons appointed by him. (Sub. by Act of 26 of 1990, w.e.f. 21.1.1991]
>
> (3) In the case of any charitable or religious institution or endowment included in the list published under clause (c) of Section 6, the Assistant Commissioner having jurisdiction shall constitute a Board of Trustees consisting of [five] persons appointed by him; [Sub. by Act of 26 of 1990, w.e.f. 21.1.1991]
>
> Provided that the Assistant Commissioner may either in the interest of the institution or endowment or for any other sufficient cause or for any reasons to be recorded in writing appoint a single trustee instead of a Board of Trustees.

16. Section 17 of the Act deals with procedure for making

appointments of trustees and their term reads as hereunder.

> "Sec. 17. **Procedure for making appointments of trustees and their term**:- (1) In making the appointment of trustees under Section 15, the Government, the Commissioner, the deputy Commissioner or the Assistant Commissioner, as the case may be, shall have due regard to the religious denomination or any such section thereof to which the institution belongs or the endowment is made and the wishes of the founder:
>
> Provided that one of the trustees shall be from the family of the founder, if qualified.
>
> (2) Every trustee appointed under Section 15 shall hold office for a term of (two years) from the date of taking oath of office and secrecy. (Subs. For the word 'one year' by Act 29 of 2000 (w.e.f. 17.7.2000)
>
> [Provided that every Trustee who completed a term of office of one year at the commencement of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments (Amendments) Act, 2000 shall cease to hold office forthwith and every Trustee whose term of office exists after such commencement shall continue to hold office for a period of two years from the date of taking oath of office and secrecy.] (Subs. By Act 29 of 2000 (w.e.f. 17.07.2000)]"

17. Section 17(1) proviso no doubt specifies that one of the trustee shall be from the family of the founder if qualified. Section 18 of the Act deals with qualifications of trusteeship. Section 19 of the Act deals with disqualifications for trusteeship. Section 19(1)(g) specifies that a person shall be disqualified for being appointed as, or for being, trustee of any charitable or religious institution or endowment if he is an office holder or servant attached to, or a person in receipt of any emolument or perquisite from such institution or endowment. Section 20 of the Act deals with Chairman of the Board of Trustees. Section 21 of the Act deals with cessation of trusteeship on absence from the

meetings of the Board of Trustees. Section 22 of the Act deals with vacancy in the office of trustee and filling of such vacancy. Section 23 of the Act deals with powers of the trustee. Section 24 of the Act deals with duties of the trustees.

18. It is no doubt true that in relation to the founder families of the institutions certain rights had been saved and conferred though the hereditary rights in general had been abolished. However, none of the provisions specified above either clarified or saved such rights of such family members in the event of the institutions of such families being amalgamated or adopted by another institution. The words "as if they were a single institution published under Section 6" in sub-Section (2) of Section 145 of the Act clarify the situation to the effect that the principal institution into which the other institution had been amalgamated or adopted to be taken as the institution of the principal institution. When that being so, unless and until an order is made under sub-section (3) of Section 145 of the Act, till then this institution being single institution the writ petitioner at present cannot claim such rights and even if attempts are made by the writ petitioner to get such declaration at this point of time, it would be a futile exercise. However, in the light of the language employed in sub-section (1) and sub-section (3) of Section 145 it cannot be said that the rights, if any, in this regard of the writ petitioner had been totally extinguished or to be put an end to. Hence, in the light of the observations the petitioner is at liberty to move appropriate application at appropriate time.

19. There may be cases where there may not be any founder family at all in relation to the principal institution and there may be founder family in relation to the amalgamated institution. Even in such a case can it be said that the founder family members of the latter institution would loose their rights by virtue of such amalgamation or adoption. There may be cases where both the institutions may have founder families and successors. There may be certain institutions where the

founder families would be left with no successors. These relevant aspects may have to be kept in mind in the light of the fact that the legislation saves the hereditary rights in this regard only to a limited extent.

20. Before parting with this case, this Court also observes that when only limited hereditary rights of the founder families of the institutions had been saved, it may not be just and proper to deprive the founder family of one institution only on the ground that the same had been amalgamated or adopted by yet another institution. It is no doubt true when the Legislative wisdom is clear, it may not be just and proper to interpret otherwise and it is for the Legislature to Amend the relevant provisions of the Statute in the light of the situations referred to above.

21. Accordingly, the writ petition is disposed of in the light of the above observations. No costs.

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(P.S.NARAYANA, J)

Date: October 26, 2007.
BSB

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[1] AIR 1996 SC 1023 = 1996 (2) SCC 498